STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 21, 2006
v AARON MICHAEL BROHL, Defendant-Appellant.	No. 264587 Wayne Circuit Court LC No. 05-002739-01

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v ALAN PATRICK BROHL, Defendant-Appellant.	No. 264617 Wayne Circuit Court LC No. 05-002739-02

Before: Owens, P.J., and White and Hoekstra, JJ.

PER CURIAM.

In these consolidated appeals, defendants Aaron and Alan Brohl appeal as of right their jury trial convictions of resisting and obstructing a police officer, MCL 750.81d(1). We affirm.

Aaron first argues that there was insufficient evidence presented to support his conviction. We disagree. We review sufficiency of the evidence claims de novo, viewing the evidence presented in a light most favorable to the prosecution and determining whether a rational trier of fact could have found that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). "Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense." *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993). We must afford deference to the trier of fact's special opportunity and ability to determine the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992).

"'[A]n individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties'" is guilty of resisting and obstructing an officer. *People v Ventura*, 262 Mich App 370, 375; 686 NW2d 748 (2004), quoting MCL 750.81d(1). The offense of resisting or obstructing an officer does not require that an officer be effectuating a lawful arrest, but rather, only that the defendant knew or should have known that the officer was performing his duties. *Ventura*, *supra* at 377.

Here, testimony presented at trial showed that Aaron charged at Officer Scott Schindler with his fist clenched, pulled Schindler by his uniform, resisted Schindler's attempts to handcuff him, and even attempted to take Schindler's pepper spray away from him. Evidence that Schindler and the other police officers present were all dressed in full uniform, and that Aaron had previously been informed that the police wanted to talk to him, was also presented at trial. Additionally, Aaron, who claimed that he did not retaliate when an unprovoked Schindler hit him, testified that he did not retaliate because he knew that there were a bunch of "cops" outside and "you can't hit at [sic] cop or nothing like that." This evidence was sufficient to show that Aaron assaulted, battered, wounded, resisted, obstructed or opposed Schindler, whom he knew or had reason to know, was a police officer performing his duties. Although Aaron testified that he never came at Schindler with a raised fist, did not resist Schindler's attempts to handcuff him, and did not strike anyone, and while Jessi Brohl testified that she never saw Aaron strike anyone, nor did she see Aaron resisting arrest, as discussed, *supra*, we must afford deference to the special opportunity and ability of the trier of fact to determine the credibility of the witnesses. Thus, we conclude that when viewed in a light most favorable to the prosecution, the evidence was sufficient to permit a rational trier of fact to find that the essential elements of resisting and obstructing a police officer were proven beyond a reasonable doubt. Accordingly, sufficient evidence was presented to support Aaron's conviction of resisting and obstructing a police officer. *Johnson*, *supra*.

Aaron next argues that the resisting and obstructing a police officer statute is vague because it allows "the factfinder unlimited discretion in determining if an offense was committed." We disagree. We review a challenge to the constitutionality of a statute under the void-for-vagueness doctrine de novo. *People v Beam*, 244 Mich App 103, 105; 624 NW2d 764 (2000).

"A statute may be challenged for vagueness on three grounds: (1) It does not provide fair notice of the conduct proscribed; (2) it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed; or (3) its coverage is overbroad and impinges on First Amendment freedoms." *People v Tombs*, 260 Mich App 201, 218; 679 NW2d 77 (2003). "[V]agueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand." *People v Howell*, 396 Mich 16, 21; 238 NW2d 148 (1976).

Because Aaron does not claim that his conduct is constitutionally protected by the First Amendment, we examine his vagueness challenge in light of the facts of this case. *Id*. MCL 750.81d(1) provides, in relevant part:

> [A]n individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing

> his or her duties is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

Aaron asserts that the phrase "knows or has reason to know is performing his or her duties" is unconstitutionally vague because it confers on the fact-finder unstructured and unlimited discretion to determine whether an offense has been committed.

In *People v Nichols*, 262 Mich App 408, 415; 686 NW2d 502 (2004), this Court found that "the phrase, 'knows or has reason to know' is fairly ascertainable by persons of ordinary intelligence and may be readily applied in the context of resisting arrest under MCL 750.81d." Accordingly, this Court found that MCL 750.81d was not unconstitutionally vague as applied to the intoxicated defendant who had looked at an officer in full uniform, swung at and pushed the officer, ran away from the officer, and subsequently, pushed, pulled, kicked and bit the officer after the officer chased him down. See *id*. at 410-415. Here, the evidence showed that Aaron knew that there was a bunch of "cops" outside, Aaron had been previously informed that the police wanted to talk to him, and that Schindler was dressed in full uniform. Yet Aaron charged at Schindler with his fist clenched, pulled Schindler by his uniform, resisted Schindler's attempts to handcuff him, and even attempted to take Schindler's pepper spray from him. Viewing Aaron's vagueness challenge in light of these facts and the precedent established in *Nichols*, we conclude that MCL 750.81d is not unconstitutionally vague as applied to Aaron. *Howell*, *supra*.

Aaron next argues that the trial court committed plain error affecting substantial rights when it failed to sua sponte give the jury an instruction on the lesser offense of assault and battery. We conclude that this issue was waived when defense counsel expressed his satisfaction with the jury instructions. See *People v Hall (On Remand)*, 256 Mich App 674, 679; 671 NW2d 545 (2003) (holding that when defense counsel expresses satisfaction with the trial court's proposed and subsequent instructions to the jury, such approval constitutes a waiver that extinguishes any error regarding the instructions).[1]

In the final issue on appeal, Alan argues that there was insufficient evidence presented to support his resisting and obstructing a police officer conviction. We disagree.

Testimony presented at trial showed that Alan yelled at Schindler telling him to get off the porch, and subsequently approached Schindler, pulled Schindler's hand off the door, slammed the door into Schindler's left thigh and buttocks, and struggled with and resisted the attempts of Officers Anthony Neal and Melissa Caldwell to handcuff him until threatened with a taser. As noted above, evidence that Schindler, Caldwell, Neal and the other police officers present were all dressed in full uniform was also presented at trial. Additionally, Alan testified that he initially went outside because he saw the police pull up and wanted to see why they stopped at his residence, and that Schindler informed him why they were at his residence. Such evidence was sufficient to show that Alan assaulted, battered, wounded, resisted, obstructed or opposed Schindler, Caldwell and/or Neal, and that he knew or had reason to know that these

[1] We note, however, that defense counsel only requested an instruction on misdemeanor resisting arrest, not assault and battery.

persons were police officers performing their duties. *Ventura*, *supra*; *Warren*, *supra*. Although Alan testified that he did not resist being handcuffed, never yelled at Schindler to get off the porch, never slammed the door into Schindler and never attempted to strike anyone, and Jessi, his sister, testified that Alan never yelled at Schindler to get off the porch and did not resist arrest, as discussed, *supra*, we must afford deference to the trier of facts special opportunity and ability to determine the credibility of the witnesses. *Wolfe*, *supra*. Thus, we conclude that when viewed in a light most favorable to the prosecution, the evidence was sufficient to permit a rational trier of fact to find that the essential elements of resisting and obstructing a police officer were proven beyond a reasonable doubt. *Johnson*, *supra*. Accordingly, sufficient evidence was presented to support Alan's resisting and obstructing a police officer conviction.

Affirmed.

/s/ Donald S. Owens
/s/ Helene N. White
/s/ Joel P. Hoekstra